Supreme Court, U.S.
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No. 94-679

In The

Supreme Court of the United States

October Term, 1994

JOHN A. SCOTT,

Petitioner,

v.

STATE OF IOWA,

Respondent.

On Petition For Writ Of Certiorari
To The Iowa Supreme Court

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Petitioner's Statement of the Case is generally acceptable to Respondent. However, Respondent must correct two inaccuracies and one omission contained in the Petition.

First, Petitioner states in Section II of the Questions Presented that four police officers ultimately were involved in the investigatory stop. As correctly found by the Iowa Supreme Court, police officer Larina Blad was alone when she initially stopped the vehicle in which Petitioner was a passenger; soon, two additional officers arrived. Pat-down searches of Petitioner and the driver were then conducted. *State v. Scott*, 518 N.W.2d 347, 348 (Iowa 1994). There was no fourth police officer involved in the stop.

Second, Petitioner states that officer Blad conducted a pat-down search of him, and asked him to identify an item in his pocket, "while still holding [him] at gun point." Petition pp. 4-5. It is true that officer Blad initially had her gun drawn when she ordered Petitioner to get out of the car. *State v. Scott*, 518 N.W.2d at 348. However, there is no evidence her gun remained drawn throughout the encounter; indeed, her testimony at the suppression hearing indicates she reholstered her weapon once the two backup officers arrived. Suppression Tr. p. 4. As for the backup officers, there is no evidence they ever drew their weapons.

Finally, Petitioner correctly states that during the pat-down search officer Blad felt something in Petitioner's pocket which she determined was not a weapon, but was

something else – the exact nature of which was not immediately apparent. Petition p. 4. Petitioner neglects to state that the officer thought that object might well be drugs. *State v. Scott*, 518 N.W.2d at 349.

SUMMARY OF THE ARGUMENT

During a pat-down search of Petitioner for weapons, the officer felt an object in Petitioner's pocket which she suspected of being drugs, and she asked him to identify it. Petitioner argues that question violated the Fourth Amendment. Contrary to his claim, no constitutional violation occurred and the Iowa court's decision is entirely consistent with the decisions of this Court. Nor is Petitioner correct in asserting there is a significant split of authority requiring resolution by this Court.

Petitioner further argues the officer's question should have been preceded by *Miranda* warnings because he was in custody. He rests his custody claim on the facts that a gun had been displayed and the pat-down search was conducted while Petitioner stood with his hands placed on a car and his feet spread. These measures were entirely reasonable to promote safety of the police officer. Application of relevant decisions of this Court establishes that Petitioner was not in custody during the investigatory stop in this case.

Consequently, the Iowa court correctly found that *Miranda* warnings were unneeded.

ARGUMENT

REASONS FOR DENYING THE WRIT

BECAUSE IT IS NOT TRUE THAT THE IOWA COURT'S DECISION CONFLICTS WITH DECISIONS OF THIS COURT OR WITH A SIGNIFICANT NUMBER OF DECISIONS OF OTHER COURTS, PETITIONER HAS FAILED TO RAISE A SUBSTANTIAL FEDERAL ISSUE UNDER THE FOURTH AND FIFTH AMENDMENTS.

A. There Is No Substantial Federal Issue Under The Fourth Amendment.

Petitioner argues that when officer Blad asked him during the pat-down search to identify the object in his pocket, the line was crossed between a protective search for weapons and a search for evidence. According to Petitioner, the discovery of drugs violated this Court's decisions in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1968, 20 L.Ed.2d 889 (1968), and *Minnesota v. Dickerson*, 508 U.S. ___, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993). Consequently, Petitioner believes the Iowa court's decision is inconsistent with those cases. He also asserts the decision is inconsistent with decisions by the courts of several other states and two federal courts of appeal. Petitioner does not dispute the Iowa court's determination that the stop and pat-down search of Petitioner were proper because the car in which he was riding had recently left an area where gunshots had been fired. *State v. Scott*, 518 N.W.2d at 348-49. However, he believes that once officer Blad concluded that the object in Petitioner's pocket was not a weapon, the encounter should have been terminated.

According to Petitioner, the Fourth Amendment was violated by any continued detention or questioning unrelated to the reason for the stop.

There can be no doubt, however, of the simple fact that the *Scott* decision does not conflict with *Terry v. Ohio* and *Minnesota v. Dickerson*. Only a proper, limited pat-down search over Petitioner's outer clothing was conducted; officer Blad did not "search" the object in Petitioner's pocket by squeezing and sliding it, as was true of the unlawful search in *Dickerson*. 508 U.S. at ___, 124 L.Ed.2d at 346-47. Instead, the officer asked Petitioner to identify the object, which she suspected of constituting drugs. Asking such a question is *not* a search. *See Coolidge v. New Hampshire*, 403 U.S. 443, 487-90, 91 S.Ct. 2022, 29 L.Ed.2d 564, 594-96 (1971); *United States ex rel. Bilokumsky v. Todd*, 263 U.S. 149, 155, 44 S.Ct. 54, 68 L.Ed. 221, 224 (1923).

Petitioner argues the *Scott* decision is inconsistent with the decisions of some state courts and federal courts of appeal. Those decisions, he asserts, held that it was illegal to continue a detention or to question a suspect about an unrelated subject after the suspicions leading to the stop had been dispelled. Except for one of those decisions, the cases Petitioner cites are distinguishable; none of them involved the situation here, where the officer's determination that the object felt during a pat-down was not a weapon was *simultaneous* with the officer's conclusion that it might be drugs. Although officer Blad was unable to satisfy the plain touch requirements of *Minnesota v. Dickerson*, because she was not sure the object was narcotics, it was not unconstitutional for her to ask Petitioner to identify the object when her suspicions

became aroused through the sense of touch. *See United States v. Barahona*, 990 F.2d 412, 416 (8th Cir. 1993) (although officer's questions must relate to the purpose of the stop, if the suspect's responses and the circumstances give rise to suspicions unrelated to the initial reason for the stop, an officer may broaden the inquiry and satisfy those suspicions). This is not a case where a *Terry* stop lasted longer than required to satisfy the initial reason for the investigation.

On facts similar to those in this case, the Court in *State v. Beveridge*, 112 N.C. App. 688, 436 S.E.2d 912, *aff'd*, ___ N.C. ___, 444 S.E.2d 223 (1994), did reach a result different from the holding in this case. A conflict between only two state reviewing courts, however, is not a substantial federal issue.

In sum, the decision in *State v. Scott* was correct and consistent with the relevant decisions of this Court. Even if that were not so, there is no significant split of authority which warrants resolution by this Court. The Petition for Writ of Certiorari should be denied.

B. There Also Is No Substantial Federal Issue Under The Fifth Amendment.

Applying the test announced in *Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984), the Iowa court concluded that Petitioner was not in custody, and *Miranda* warnings were unneeded, when the officer asked him to identify the object in his pocket. *State v. Scott*, 518 N.W.2d at 350. Of course, the Iowa court was correct. The investigatory stop was conducted in public, as was also true of the stop in *Berkemer*. An undue

number of police officers were not involved, and there was no extensive questioning during the encounter. Moreover, the passage of time between the initial stop and officer Blad's question regarding the object in Petitioner's pocket was undoubtedly brief. Nor had the officer made any statements to Petitioner before finding the drugs which would tend to indicate that the detention would be anything but limited. These considerations show Petitioner was not effectively in custody for purposes of *Miranda*. *See Berkemer*, 468 U.S. at 437-42, 82 L.Ed.2d at 333-36.

It is true that officer Blad *initially* displayed a weapon before the backup officers arrived. However, display of a weapon during a stop to investigate a crime of violence is reasonable. *See United States v. Hensley*, 469 U.S. 221, 224, 235, 105 S.Ct. 675, 83 L.Ed.2d 604, 609, 616 (1985). Of course, the same must be concluded about requiring Petitioner to take a particular stance (hands on the car, feet spread) during the pat-down search.

Consequently, Petitioner's claim that this case conflicts with Supreme Court precedent is unfounded. The Petition for Writ of Certiorari should be denied.

CONCLUSION

For the above reasons, the State respectfully asks this Court to deny Petitioner John A. Scott's Petition for Writ of Certiorari.

Respectfully submitted,

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